

Sample Advisory on Protecting Privacy of Personal Information in Electronic Transcripts 2009

Since 2001, the Judicial Conference of the United States has had a policy to protect sensitive private information about parties, witnesses, and others involved in a civil, criminal, or bankruptcy case. The policy covers all documents filed with the court and made available to the public, whether electronically or on paper, and it requires filers to limit certain information as follows:

- for Social Security numbers and taxpayer identification numbers, use only the last four digits;
- for financial account numbers, use only the last four digits;
- for names of minor children, use only their initials;
- for dates of birth, use only the year; and
- (in criminal cases only) for home addresses, use only the city and state.

In 2007, the policy's requirement that filings not include these personal-data identifiers in case filings was codified in the federal civil, criminal, bankruptcy, and appellate rules. See Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1; Fed. R. App. P. 25; and Fed. R. Bankr. P. 9037.

Although transcripts filed with the court must also conform to the rules, the Judicial Conference recognizes that electronic transcripts pose unique issues for the redaction requirements of the new rules. To that end, the Conference's Privacy Policy sets out the procedures for the redaction of personal information from the electronic transcripts.

Under the policy, the parties have seven calendar days after the court reporter or transcriber has filed the official transcript with the clerk's office to review the transcript and file a notice of request for redaction. They have a total of twenty-one days, or longer if ordered by the court, from the time the official transcript is filed to submit the actual request for redaction, which specifies the pages and line numbers of information that is to be redacted to comply with the rules. During that time, the transcript is available for review at the clerk's office. For more information about the policy, see www.privacy.uscourts.gov.

Rather than relying on the redaction process, the better practice is to keep sensitive information out of the transcript in the first place. Doing this will better protect private data and will save time for everyone—attorneys, court reporters, court staff, and judges. It will reduce the likelihood of inadvertent disclosure of sensitive information, as well as the time needed to review records, make redactions, and handle requests for extensions or sealing the record.

Therefore, it would be helpful for courts to advise the parties—at hearings, pretrial conferences, or the start of trial—to avoid asking for or mentioning restricted information. A sample advisory is provided below. Judges may also find it appropriate to intervene to instruct a witness to limit an answer in order to avoid

*Sample Advisory on Protecting Privacy of Personal Information
in Electronic Transcripts*

giving restricted information. For more information, see the JCUS privacy policy at www.privacy.uscourts.gov.

Sample Advisory for Limiting Personal Information in Transcripts

The federal rules of procedure restrict the publication of certain personal data in documents filed with the court. The rules require limiting Social Security, taxpayer identification, and financial account numbers to the last four digits, using only initials for the names of minor children, and limiting dates of birth to the year. [For criminal cases, also limit home addresses to city and state.] However, if such information is elicited during testimony or other court proceedings, it will become available to the public when the official transcript is filed at the courthouse unless, and until, it is redacted. The better practice is for you to avoid introducing this information into the record in the first place. Please take this into account when questioning witnesses or making other statements in court.

Note: This document was prepared at the request of the Judicial Conference Committee on Court Administration and Case Management (CACM), which has oversight responsibility for the Judicial Conference's privacy policy. It was prepared in consultation with and reviewed by the CACM Committee and its staff, and any questions about the privacy policy or this document should be directed to Susan Del Monte at 202-502-1560 or Susan_Del_Monte@ao.uscourts.gov.